IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.488 OF 2004
IN
SUMMARY SUIT NO.1563 OF 2004

Hiren Pravin Doshi .. Plaintiff

Vs.

The State of Maharashtra and Ors... Defendants

Mr.S.N.Vaishnava i/b N.N.Vaishnava and Co. for the plaintiff

Mr.P.G.Lad, A.G.P. for the defendants

**CORAM : S.U.KAMDAR, J**
**DATED : 31ST AUGUST, 2005**

P.C.:

1. The present suit is filed for the recovery of sum of Rs.1,84,35,061.00 from the defendant, the State of Maharashtra. It is the case of the plaintiff that the plaintiff has sold and delivered the medicines to the various E.S.I.S. Hospitals which are run by defendant no.2. In para 4 of the plaint there is a confirmation that the Purchase Orders in respect of the said goods are placed by the defendant no.1 to company known as Maharashtra Anti Biotic and Pharmaceuticals Ltd. and pursuant

to these purchase orders he is supposed to have effected delivery of the said goods. The said MAPL is not joined as a party but the learned counsel for the plaintiff relies upon the authority letter issued by the MAPL dt.13.3.01 being Ex.B to the plaint under which the MAPL is supposed to have authorised the plaintiff to distribute the goods, raise the bills and collect the payment.

2. In my opinion there is no contract between the plaintiff and the defendant for the supply of the aforesaid material even if the purchase orders, invoices and delivery challans are to be treated as contract. In view of the fact that admittedly purchase order are placed by MAPL the liability raised in the suit cannot be fastened to the defendants. The so called authorisation letter which is issued by MAPL is not binding on the defendants. In my opinion, triable issue arises in the present case. In view thereof, unconditional leave to defend is granted. Suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of

documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.